



RICE REUTHER
SULLIVAN & CARROLL

November 12, 2020

Certified U.S. Mail – Return Receipt Requested

U.S. Attorney's Office – Attn: Civil-Process Clerk
501 Las Vegas Boulevard South, Suite 1100
Las Vegas, NV 89101

Certified U.S. Mail – Return Receipt Requested

William Barr, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Certified U.S. Mail – Return Receipt Requested

William Perry Pendley, Deputy Director
U.S. Bureau of Land Management
1849 C Street NW, Rm. 5665
Washington, DC 20240

Certified U.S. Mail – Return Receipt Requested

David Bernhardt, Secretary
U.S. Department of Interior
1849 C Street, N.W.
Washington, DC 20240

Certified U.S. Mail – Return Receipt Requested

U.S. Bureau of Land Management
Southern Nevada District Office | Las Vegas Field
Office
4701 N. Torrey Pines Drive
Las Vegas, NV 89130

Certified U.S. Mail – Return Receipt Requested

U.S. Department of Interior
Southern Nevada District Office | Las Vegas
Field Office
4701 N. Torrey Pines Drive
Las Vegas, NV 89130

**Re: Basic Water Company v. South West Enterprise Holdings, LLC, U.S.
Department of Interior, and U.S. Bureau of Land Management, Case No.
2:20-cv-01678-JCM-EJY (D. Nev.)**

Greetings,

Pursuant to Fed. R. Civ. P. 4(i), please find this correspondence as service of process of the following:

1. Summons In A Civil Action (Issued to U.S. Bureau of Land Management), ECF No. 12;
2. Summons In A Civil Action (Issued to U.S. Department of Interior), ECF No. 12;
3. Amended Complaint For Declaratory Judgment, ECF No. 7.

Please do not hesitate to contact my office if you have questions.

Very truly yours,

RICE REUTHER SULLIVAN & CARROLL, LLP

Anthony J. DiRaimondo, Esq.

AJD:gm
Enclosures

RICE REUTHER SULLIVAN & CARROLL, LLP
3800 Howard Hughes Pkwy, Suite 1200
Las Vegas, Nevada 89169
(702) 732-9099

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3 Robert E. Opdyke, Esq. (NSB #12841)

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5 Las Vegas, Nevada 89169

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6 Facsimile: (702) 732-7110

7 Karen A. Peterson, Esq. (NSB #366)

kpeterson@allisonmackenzie.com

8 **ALLISON MACKENZIE, LTD.**

402 N. Division Street

9 P.O. Box 646

Carson City, Nevada 89702

10 Telephone: (775) 687-0202

11 Facsimile: (775) 882-7918

Attorneys for Plaintiff Basic Water Company

12
13 **UNITED STATES DISTRICT COURT**

14 **FOR THE DISTRICT OF NEVADA**

15 BASIC WATER COMPANY, a Nevada
16 corporation,

17 Plaintiff,

18 vs.

19 SOUTH WEST ENTERPRISE HOLDINGS,
20 LLC, a Nevada limited liability company,
21 UNITED STATES DEPARTMENT OF
22 THE INTERIOR; and UNITED STATES
BUREAU OF LAND MANAGEMENT,

Defendants.

Case No. 2:20-cv-01678-JCM-EJY

**AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT**

23 Plaintiff BASIC WATER COMPANY ("BWC"), by and through its attorneys of record,
24 the law firm of Rice Reuther Sullivan & Carroll, LLP and the law firm of Allison MacKenzie,
25 Ltd., hereby files this Amended Complaint for Declaratory Judgment and alleges as follows:

26 ///

27 ///

PARTIES

1
2 1. Plaintiff BWC is, and at all material times hereto was, an entity organized under the
3 laws of the State of Nevada and lawfully doing business in Clark County, Nevada.

4 2. Defendant SOUTH WEST ENTERPRISE HOLDINGS, LLC ("South West") is,
5 and at all material times hereto was, an entity organized under the laws of the State of Nevada and
6 doing business in Clark County, Nevada. The Nevada Secretary of State's records reflect
7 Defendant South West's Manager as Mr. Joe Yakubik.

8 3. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR ("U.S.
9 Department of Interior") is, and at all material times hereto was, a department of the United States
10 government.

11 4. Defendant UNITED STATES BUREAU OF LAND MANAGEMENT ("U.S.
12 Bureau of Land Management") is, and at all material times hereto was, a bureau of the U.S.
13 Department of Interior.

14 **JURISDICTION AND VENUE**

15 5. This Court has jurisdiction because (a) the acts and omissions complained of herein
16 were committed by Defendants within the State of Nevada, County of Clark, and thus, Defendants
17 have had sufficient minimum contacts with this forum such that the exercise of personal
18 jurisdiction over them will not offend the traditional notions of fair play and substantial justice;
19 and (b) there is subject matter jurisdiction for this case which involves property rights initially
20 conveyed by the Federal Government. 28 U.S.C. §1331; *Samuel C. Johnson 1988 Trust v.*
21 *Bayfield County, Wis.*, 649 F.3d 799, 801 (7th Cir. 2011) (finding federal jurisdiction existed over
22 declaratory judgment action "because the property was once owned by the federal government and
23 the plaintiffs ultimately base their suit on the terms of the original federal grants, the suit may be
24 said to arise under federal law as well").

25 6. Venue is proper in this Court because the subject matter of this Amended
26 Complaint and other acts alleged herein occurred within Clark County, Nevada. Specifically, this
27 Amended Complaint seeks declaratory relief concerning property rights within the City of
28 Henderson, Clark County, Nevada.

GENERAL ALLEGATIONS

BWC's Right of Way and Water Line

7. Plaintiff BWC, as assignee of Basic Management, Inc., is the owner of a forty (40) inch water pipeline and related systems and appurtenances (the "BWC Water Line") which lie within a right of way for a water pipeline and related appurtenances issued by the United States under a decision dated October 5, 1954 pursuant to the Act of February 15, 1901 (the "Right of Way").

8. The BWC Water Line constitutes critical infrastructure, supplying water to the City of Henderson and the Black Mountain Industrial Center. Any failure of the BWC Water Line would jeopardize a significant source of water for the City of Henderson, its residents and other customers, including Lake Las Vegas, and would jeopardize the fire protection systems of the industrial plants at the Black Mountain Industrial Center.

9. Further, the BWC Water Line is a water supply source to various Federal agencies operating in Nevada, including the United States National Park Service. Accordingly, any failure of the BWC Water Line would jeopardize the interests and operations of the United States, including the condition and safety of Federal lands. This is significant given Nevada has more than 56,000,000 acres of Federally-owned land and the highest in percentage of any state. Congressional Research Service, *Federal Land Ownership: Overview and Data* (Feb. 21, 2020 update), <https://fas.org/sgp/crs/misc/R42346.pdf>

10. Defendant South West is the owner of certain parcels of real property located in the City of Henderson and generally described as Clark County Assessor's Parcel Numbers 160-33-801-018, -019, -020 and -021 (collectively, the "South West Property").

11. The BWC Water Line and the Right of Way cross a portion of the South West Property. This has been a matter of public record for decades and long before Defendant South West purchased the South West Property in September 2018. Indeed, after purchase, South West recorded its Parcel Map in March 2020, which acknowledged the Right of Way crossing the South West Property.

South West's Development Poses

Significant Risk to BWC's Water Line

12. Defendant South West and its affiliates are developers of various projects in the "Water Street" area of Henderson, Nevada, including mixed-use developments. Julie Wootton-Greener, *Henderson projects aimed at bringing crowds back to Water Street*, LAS VEGAS REVIEW JOURNAL, Aug. 6, 2019.¹

13. Defendant South West's development operations include the South West Property, which has been subdivided into four parcels following South West's purchase from Greystone Nevada, LLC.

14. Defendant South West's proposed development of the South West Property includes heavy construction work within Plaintiff BWC's Right of Way. Accordingly, in deciding whether to approve the proposed development, the City of Henderson sought input and approval from Plaintiff BWC and its affiliate(s) as well as from other public utilities, including Southern Nevada Water Authority.

15. On July 16, 2020, the City provided its approval of Defendant South West's development plans subject to the further approvals from BWC and/or its affiliate(s) as well as other public utilities with infrastructure implicated by South West's proposed development.

16. On July 20, 2020, Plaintiff BWC's affiliate provided its approval which included and was specifically made subject to the following:

Approval of these plans is not approval to occupy the Basic Water Company (BWC) easement. The Owner or Owners contractor must complete the BWC encroachment application and receive an approved encroachment permit prior to the start of work within the easement.

17. Despite the above requirement, Defendant South West never submitted its encroachment permit application as it relates to its work within the Right of Way and indicated it will never do so. Yet, Defendant South West proceeded to commence its development of the

¹ This article includes extensive quotations from Joe Yakubik. As described above, information on file with the Nevada Secretary of State confirms that Mr. Yakubik is the Manager of Defendant South West.

South West Property, which included the operation of heavy construction machinery within the Right of Way and over the BWC Water Line. Defendant South West has also blocked BWC's access to the Right of Way, and further engaged in a campaign of harassment and threats against BWC's employees and agents. Defendant South West's activity within the Right of Way threatens the BWC Water Line and is a violation of the rights granted by the Right of Way.

18. The City of Henderson found Defendant South West in violation of applicable law and issued a "red tag" citation. Nonetheless, Defendant South West continued unabated with its construction work within the Right of Way and over the BWC Water Line, and South West refuses to allow BWC to enter its Right of Way to inspect the work which has been done and to maintain the BWC Water Line.

19. On August 25, 2020, Plaintiff BWC's attorney sent correspondence to Defendant South West's attorney advising of the foregoing issues and demanding that South West cease and desist from continuing to conduct its operations without appropriate permitting or other protections in place. This demand letter sternly warned Defendant South West that South West's operations could damage critical infrastructure, which would have disastrous impact on BWC and the public at large. These potential harms include, but are not limited to: (1) BWC incurring significant cost and expense to repair the water pipeline and appurtenances; (2) disruption of water delivery to the City of Henderson as well as Federal and State governments (without any immediately available secondary source); (3) harm to the condition and safety of Federal lands, including national parks or conservation areas; (4) disruption of emergency fire protection water to industrial customers at the Black Mountain Industrial Center; and (5) squandering a precious natural resource through leaks and breaks.

Defendant South West's Retaliation

20. On September 1, 2020, Defendant South West retaliated against Plaintiff BWC by having South West's attorney send a letter purporting to revoke the Right of Way:

Re: Notice of Revocation of Right-of-Way

Dear Messrs. Carroll and DiRaimondo:

1 This letter is in response to your correspondence dated August 25,
2 2020, regarding the purported interest of your client, Basic Water
Company and its affiliates, in and to the Property (as your
correspondence defines it).

3 To the extent the Right of Way (as your correspondence defines it)
4 has not been previously terminated as a matter of law, [Defendant
South West] hereby revokes the Right of Way pursuant to the
5 authority granted to a "successor" of the Secretary of Interior by 31
Stat. 790 (February 15, 1901) (later codified as 43 USC § 959).

6 Please do not hesitate to contact us if you have questions.

7 Sincerely,

8 Jeffrey F. Barr, Esq.

9 21. Plaintiff BWC disputes Defendant South West's suggestion that the Right of Way
10 has previously been terminated or is otherwise unenforceable. Plaintiff BWC's Right of Way is
11 valid and enforceable as a matter of federal law based on 43 U.S.C. § 959, 43 U.S.C. § 1769, and
12 all regulations issued pursuant thereto, all rights reserved to the United States when the South
13 West Property was patented and the rights of way to which such patent were subject, and subject
14 to the reservations, rights, right of way and easements recorded against the South West Property
15 and all other matters of record as provided in the deeds from Defendant's predecessors.

16 22. Further, Plaintiff BWC disputes Defendant South West's purported revocation.
17 Federal law does not permit such revocation rights to be exercised here. *Swendig v. Wash. Water*
18 *Power Co.*, 281 F. 900, 902 (9th Cir. 1922), *aff'd* 265 U.S. 322, 331 (1924) (holding that the Act
19 of 1901 does not permit a subsequent, private landowner to revoke the rights upon which
20 "expensive and permanent construction" and other "improvements" were previously installed by
21 "industries and utilities").

22 23. Accordingly, it has become necessary for Plaintiff BWC to seek a declaratory
23 judgment against Defendant South West in order to protect its rights.

24 **The United States Has A Substantial Property Interest**

25 **In The Subject Matter Of This Dispute**

26 24. Defendant South West contends that the Right of Way has been revoked,
27 terminated, or is otherwise unenforceable and Plaintiff BWC seeks a declaratory judgment to the
28

1 contrary. This dispute between the parties relates to a substantial property interest of the United
2 States.

3 25. As discussed above, the subject Right of Way was issued by the U.S. Department
4 of Interior under a decision dated October 5, 1954 pursuant to the Act of February 15, 1901.

5 26. The U.S. Department of Interior—which granted this Right of Way decades ago—
6 continues to recognize the Right of Way as valid and enforceable. Indeed, the U.S. Department of
7 the Interior, through its U.S. Bureau of Land Management, continues to send Plaintiff BWC an
8 annual “Bill for Collection” which includes the description “NVN 0011112 . . . RIGHT OF WAY
9 RENTAL: CLARK COUNTY - 408.70 ACRES.”² Plaintiff BWC has paid the United States for
10 the rental fees as charged and is current on such payment obligations.

11 27. Neither the U.S. Department of Interior nor the U.S. Bureau of Land Management
12 has provided any notice to BWC, as holder of the Right of Way, that the United States no longer
13 owned, controlled, or managed the Right of Way or that the subject Right of Way is no longer
14 within the jurisdiction of the U.S. Bureau of Land Management.

15 28. Accordingly, this Court’s ultimate declaration as to the validity and enforceability
16 of the Right of Way is determinative of a substantial property interest of the United States such
17 that it is necessary and appropriate for the United States to be named as a party to this suit.

18 **FIRST CLAIM FOR RELIEF**

19 **Declaratory Judgment**

20 29. Plaintiff BWC hereby realleges, reasserts, and incorporates by reference all prior
21 allegations in this Amended Complaint as if they were fully set forth in this paragraph.

22 30. In cases of actual controversy and within the jurisdiction of the court, any court of
23 the United States may declare rights and other legal relations of any interested party seeking such
24 declaration, whether or not further relief is or could be sought. 28 U.S.C. § 2201. Any such
25 declaration shall have the force and effect of a final judgment or decree and shall be reviewable as
26 such. *Id.* Federal courts may apply the declaratory judgment statute to determine the existence,

27
28 ² Each invoice’s numerical reference to the Right of Way matches the numerical reference
on the 1954 Decision described above.

1 validity, and enforceability of rights of way. *Columbia Gas Transmission, LLC v. Vlahos*, 94
2 F.Supp.3d 728, 737 (E.D. Va. 2015) (declaratory relief appropriate to determine whether
3 landowner's metal fence interfered with right of way containing natural gas pipeline). Further,
4 where, as here, the United States claims an interest in the subject right of way, the court must
5 determine rights under 28 U.S. Code § 2409a unless the United States elects to disclaim its
6 interest.

7 31. The existence of another adequate remedy does not preclude a declaratory
8 judgment that is otherwise appropriate. Fed. R. Civ. P. 57.

9 32. There is an actual case and controversy here between Plaintiff BWC and Defendant
10 South West, including, but not limited to, South West: (a) occupying and operating heavy
11 construction machinery within the Right of Way and over the BWC Water Line; (b) blocking
12 BWC's access to the Right of Way, and further harassing and threatening BWC's employees; (c)
13 contending that Plaintiff BWC's Right of Way was terminated as a matter of law or otherwise
14 unenforceable or invalid; and (d) purporting to revoke Plaintiff BWC's Right of Way. Further,
15 this actual case and controversy involves a substantial property interest of the United States
16 because Defendant South West contends that it has revoked the Right of Way or that it is
17 otherwise terminated or unenforceable.

18 33. This is a definite and concrete dispute, which involves the parties' legal rights and
19 adverse interests, such that the Court may make a definite and immediate determination.
20 Accordingly, the Court should declare:

- 21 a. The Right of Way is valid, existing, and enforceable as a matter of law.
- 22 b. The Right of Way, includes, but is not limited to, the right of ingress and egress of
23 BWC and its affiliates and agents across the South West Property in order to access
24 the Right of Way for purposes including maintenance, inspection, and repair.
- 25 c. The Right of Way has not terminated or extinguished as a matter of law or
26 otherwise.
- 27 d. Defendant South West's purported revocation of the Right of Way is null, void,
28 invalid, and ineffective as a matter of law.

34. As a proximate and necessary result of Defendant's conduct alleged above, it has been necessary for BWC to retain the services of the law firms of Rice Reuther Sullivan & Carroll, LLP and Allison MacKenzie, Ltd. to bring this Amended Complaint. Accordingly, Plaintiff BWC is entitled to recover its reasonable attorneys' fees and court costs incurred herein as special and foreseeable damages, or in the alternative, as costs of suit.

WHEREFORE, Plaintiff BWC prays for judgment as follows:

1. Declaratory Judgment in favor of BWC and against Defendant South West;
2. Declaratory relief as requested herein;
3. Preliminary and permanent injunctive relief;
4. An award of attorneys' fees and costs in favor of BWC; and
5. Any other relief that the Court deems necessary and appropriate. See 28 U.S.C. § 2202.

DATED this 10th day of November, 2020.

RICE REUTHER SULLIVAN & CARROLL, LLP

By: /s/ Anthony J. DiRaimondo

David A. Carroll, Esq. (NSB #7643)
Anthony J. DiRaimondo, Esq. (NSB #10875)
Robert E. Opdyke, Esq. (NSB #12841)
3800 Howard Hughes Parkway, Suite 1200
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-and-

Karen A. Peterson, Esq. (NSB #366)
ALLISON MACKENZIE, LTD.
402 N. Division Street
P.O. Box 646
Carson City, Nevada 89702

Attorneys for Plaintiff Basic Water Company

RICE REUTHER SULLIVAN & CARROLL, LLP
3800 Howard Hughes Pkwy, Suite 1200
Las Vegas, Nevada 89169
(702) 732-9099

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of November, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using CM/ECF system which will send notification of such filing to the e-mail address denoted on the attached Electronic Mail Notice List as follows:

JEFFREY F. BARR, ESQ.
Nevada Bar No. 7269
MICHELLE D. ALARIE, ESQ.
Nevada Bar No. 11894
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3770 Howard Hughes Parkway, Suite 200
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malarie@atllp.com

/s/ Gayle McCrea
An employee of Rice Reuther Sullivan & Carroll, LLP

RICE REUTHER SULLIVAN & CARROLL, LLP
3800 Howard Hughes Pkwy, Suite 1200
Las Vegas, Nevada 89169
(702) 732-9099

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Nevada

BASIC WATER COMPANY, a Nevada corporation

Plaintiff(s)

v.

SOUTHWEST ENTERPRISE HOLDINGS, LLC, a
Nevada limited company; UNITED STATES
DEPARTMENT OF THE INTERIOR; and UNITED
STATES BUREAU OF LAND MANAGEMENT,

Defendant(s)

Civil Action No. 2:20-cv-01678

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* UNITED STATES DEPARTMENT OF THE INTERIOR
Southern Nevada District Office | Las Vegas Field Office
4701 N. Torrey Pines Drive
Las Vegas, Nevada 89130

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

David A. Carroll, Esq.
Anthony J. DiRaimondo, Esq.
Rice Reuther Sullivan & Carroll, LLP
3800 Howard Hughes Parkway, Suite 1200
Las Vegas, NV 89169

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.



CLERK OF COURT

[Handwritten Signature]

Signature of Clerk or Deputy Clerk

Date: 11/10/2020

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:20-cv-01678

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Nevada

BASIC WATER COMPANY, a Nevada corporation

Plaintiff(s)

v.

SOUTHWEST ENTERPRISE HOLDINGS, LLC, a
Nevada limited company; UNITED STATES
DEPARTMENT OF THE INTERIOR; and UNITED
STATES BUREAU OF LAND MANAGEMENT,

Defendant(s)

Civil Action No. 2:20-cv-01678

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* UNITED STATES BUREAU OF LAND MANAGEMENT
Southern Nevada District Office | Las Vegas Field Office
4701 N. Torrey Pines Drive
Las Vegas, Nevada 89130

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

David A. Carroll, Esq.
Anthony J. DiRaimondo, Esq.
Rice Reuther Sullivan & Carroll, LLP
3800 Howard Hughes Parkway, Suite 1200
Las Vegas, NV 89169

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.



CLERK OF COURT

Debra K. King

Signature of Clerk or Deputy Clerk

Date: 11/10/2020

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:20-cv-01678

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

RECEIVED
2020 NOV 16 AM 11:17
U.S. ATTORNEY'S OFFICE
LAS VEGAS, NV

CERTIFIED MAIL



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11/12/2020

032A 0061803772

 **RICE REUTHER
SULLIVAN & CARROLL**

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